

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

**DECLARATION OF DAVID J. SHEEHAN IN SUPPORT OF
THE TRUSTEE'S MOTION FOR AN ORDER AFFIRMING TRUSTEE'S
DETERMINATION DENYING CLAIMS OVER ERISA-RELATED OBJECTIONS**

I, David J. Sheehan, Esq., of full age, hereby declare as follows:

1. I am a partner at the law firm of Baker & Hostetler LLP, counsel to Irving H. Picard, Esq., trustee ("Trustee") for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C. §78aaa *et seq.* ("SIPA"), and for Bernard L. Madoff ("Madoff") (collectively, "Debtor").

2. As an attorney of record, I am fully familiar with this case and the facts set forth herein.

3. In accordance with this Court's scheduling order of November 8, 2011 ("Scheduling Order") (ECF No. 4507), the Trustee filed his Motion For An Order to Affirm Trustee's Determination Denying Claims Over ERISA-Related Objections ("ERISA Motion")

on November 14, 2011. Any claimants who wished to participate in the briefing on the ERISA Motion were required to file oppositions on or before January 17, 2012. Annexed hereto as Exhibits 1 and 2 are lists containing details of the claimants (“Objecting Claimants”) and oppositions (“Oppositions”) filed in response to the Trustee’s ERISA Motion in accordance with the Scheduling Order.

4. Exhibit 1 annexed hereto is a list of the docket numbers of the Oppositions, the date filed, the document name, the filing party, contact information, claim number, and the BLMIS account number to which their claim was related.

5. Exhibit 2 annexed hereto is a list of the Objecting Claimants on whose behalf the oppositions were filed, the docket number of the Opposition, claim numbers, and the docket number of their claim objection.

6. To date, twelve Oppositions have been filed to the ERISA Motion, each of which was on behalf of claimants without BLMIS accounts. The ERISA Motion addresses all of the Oppositions.

7. While the Oppositions were filed on behalf of claimants without BLMIS accounts, the Objecting Claimants can be further categorized as either Individual Claimants or Plan Claimants, as defined in the Trustee’s Memorandum of Law in Support of the ERISA Motion at pages 7-12, filed concurrently herewith.

8. Certain of the Objecting Claimants filed with the Trustee or with the Court documentation in support of the arguments set forth in their Oppositions. In accordance with the Scheduling Order, this documentation has been collected by the Trustee for a unified submission to the Court. These documents are identified below.

9. Bates-stamped documents BHERISA0000001 – BHERISA0000034 are true and correct copies of the documents filed by claimant Siegel IRA, in support of its Opposition. The Bates-stamped documents include a notice of determination of claim, correspondence and various materials. These documents have also been filed electronically with the Court and are available on PACER (ECF No. 4625).

10. Bates-stamped documents BHERISA0000035 – BHERISA0000168 are true and correct copies of the documents filed by claimant Upstate New York Bakery Drivers and Industry Pension Fund, in support of its Opposition. The Bates-stamped documents include Form 5500 documents, plan agreements, agreements with BLMIS, customer claim and notice of determination of claim. These documents have also been filed electronically with the Court and are available on PACER (ECF No. 4626).

11. Bates-stamped documents BHERISA0000169 – BHERISA0000459 are true and correct copies of the documents submitted to the Trustee by claimant LTD. Editions Media, Inc. Defined Pension Plan, in support of its Opposition. The Bates-stamped documents include various correspondence, notice of determination of claim and objection to determination of claim. These documents have not been electronically filed with the Court and are not available on PACER.

12. Bates-stamped documents BHERISA0000460 – BHERISA0000538 are true and correct copies of the documents filed by claimant Orthopaedic Specialty Group P.C., in support of its Opposition. The Bates-stamped documents include 401(k) pension plans, investment plans, correspondence, BLMIS statements, customer claim and notice of determination of claim. These documents have also been electronically filed with the Court and are available on PACER (ECF No. 4632).

13. Bates-stamped documents BHERISA0000539 – BHERISA0000544 are true and correct copies of additional documents filed by claimant Orthopaedic Specialty Group P.C., in support of its Opposition. The Bates-stamped documents include notes of conversations with Mr. Frank DiPascali at BLMIS. These documents have also been electronically filed with the Court and are available on PACER (ECF No. 4633).

14. Bates-stamped documents BHERISA0000545 – BHERISA0012537 are true and correct copies of the documents submitted to the Trustee by claimant Bricklayers and Allied Craftworkers Local 2, in support of its Opposition. The Bates-stamped documents include various correspondence, various Beacon/Andover trust agreements, operating agreements, annuity fund documents, pension plan documents, ERISA Plans, summary plan descriptions, articles of organization, offering memorandum, annual returns/reports, Income-Plus files, customer claims, and notice of determination of claim. These documents have not been electronically filed with the Court and are not available on PACER.

15. Bates-stamped documents BHERISA0012538 – BHERISA0012542 are true and correct copies of the documents filed by claimant Jacqueline Green Rollover Account, in support of its Opposition. The Bates-stamped documents include correspondence to BLMIS regarding the name change of the plan. These documents have also been electronically filed with the Court and are available on PACER (ECF No. 4638).

16. Bates-stamped documents BHERISA0012543 – BHERISA0012548 are true and correct copies of the documents filed by claimant Wayne D. Green Rollover Account, in support of its Opposition. The Bates-stamped documents include correspondence to BLMIS regarding the name change of the plan. These documents have also been electronically filed with the Court and are available on PACER (ECF No. 4640)

17. Bates-stamped documents BHERISA0012549 – BHERISA0012618 are true and correct copies of the documents filed by claimant J.X. Reynolds & Co. Deferred Profit Sharing Plan, in support of its Opposition. The Bates-stamped documents include a plan description, activity status reports for the plan, copies of checks for deposits with BLMIS, history of plan deposits and withdrawals, and correspondence. These documents have also been electronically filed with the Court and are available on PACER (ECF No. 4642).

18. Bates-stamped documents BHERISA0012619– BHERISA0012737 are true and correct copies of the documents submitted to the Trustee by claimant Eric S. Saretsky & The Plan Administrator of the Sterling Equities Associates Employee Retirement Plan, in support of their Opposition. The Bates-stamped documents include summary plan descriptions, plan participant investments, brokerage account documents with BLMIS, account statements, correspondence, customer claims, notice of determination of claim, objection to determination of claim, annual report to plan fiduciaries issued by BLMIS. These documents have not been electronically filed with the Court and are not available on PACER.

19. The full set of documents described herein, Bates-stamped documents BHERISA00000001-BHERISA0012737, will be made available to the Court.

20. Annexed hereto as Exhibit 3 is a true and correct copy of the decision in *Pfeil v. State Street Bank & Trust Co.*, No. 10-2302 (6th Cir. Feb. 22, 2012).

21. Annexed hereto as Exhibit 4 is a true and correct copy of a 49-page document promulgating the Plan Asset Regulation, 29 C.F.R. Parts 2509, 2510, and 2550, 51 FR 41262-01, 1986 WL 116042 (F.R.) (Nov. 13, 1986).

22. I declare under penalty of perjury that the foregoing is true and correct. Executed
on March 2, 2012.

/s/ David J. Sheehan
David J. Sheehan